

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GMO GAMECENTER USA, INC. and GMO
INTERNET GROUP, INC.,

Plaintiffs,

- against -

WHINSTONE US, INC.,

Defendant.

Civil Action No. 1:22-cv-05974-JPC

WHINSTONE US, INC.,

Counterclaim Plaintiff,

- against -

GMO GAMECENTER USA, INC. and GMO
INTERNET GROUP, INC.,

Counterclaim Defendants.

**DECLARATION OF KENYON HAYWARD IN SUPPORT OF GMO'S
ORDER TO SHOW CAUSE FOR A TEMPORARY RESTRAINING ORDER
TO PRESERVE EVIDENCE AND THE STATUS QUO**

KENYON HAYWARD, pursuant to 28 U.S.C. 1746, declares as follows:

1. I am the Co-Founder of HashWatt, Inc., a Bitcoin mining company based in the United States. I have an extensive understanding of Bitcoin mining operations, including Bitcoin mining protocols, custody layer, security protocols, pool development, energy development, partner and channel development for hosting, capital formation, P&L responsibilities, Bitcoin data center build out, electrical engineering, service deliveries, power purchase agreements, and custody for physical and digital asset management.

2. As it relates to this matter, I have been retained by Haynes and Boone LLP, counsel for Plaintiffs and Counterclaim Defendants GMO Gamecenter USA, Inc. and GMO Internet Group, Inc. (collectively, “GMO”) as an expert consultant. I respectfully submit this declaration in support of GMO’s Order to Show Cause for a Temporary Restraining Order to Preserve Evidence and the Status Quo against Defendant and Counterclaim Plaintiff Whinstone US, Inc. (“Whinstone”), and for such other and further relief as this Court deems just and proper.

3. Based on my review of GMO’s Third Amended Complaint (ECF No. 30), Whinstone’s Answer and Counterclaims (ECF No. 34), GMO’s Answer to Whinstone’s Counterclaims (ECF No. 37), and the parties’ initial disclosures filed in this matter, there are many claims and defenses made by the parties that concern the operation of GMO’s machines and Whinstone’s handling of such machines. Specifically, and by way of example only, GMO has alleged that Whinstone has failed to provide adequate power to GMO’s machines and that Whinstone has removed GMO’s machines from operation. Whinstone has alleged that GMO’s machines were/are old and in a state of disrepair. Both parties have asserted that the other party has caused GMO’s machines to operate less efficiently, due to a variety of factors including power supply, the construction and/or condition of Whinstone’s Bitcoin mining data center located in Rockdale, Texas (the “Texas Data Center”), the age and conditions of GMO’s machines, GMO’s machine repair process, the installation of GMO’s machines, and a variety of other technical factors affecting the operations of GMO’s machines at the Texas Data Center.

4. As part of my planned expert work on behalf of GMO for this matter, I plan on visiting the Texas Data Center on August 1 and August 2, 2023, in order to observe and document GMO’s machines in operation.

5. While it is better than not visiting at all, this single planned visit on August 1 and August 2, 2023, is not sufficient for me to fully and properly assess the operations of GMO's Bitcoin mining machines at the Texas Data Center, and in turn, the parties' claims, defenses, and damages asserted in this matter.

6. In order to fully and properly assess the operations of GMO's Bitcoin mining machines at the Texas Data Center and the parties' claims, defenses, and damages asserted in this matter, I need to visit the Texas Data Center to observe and document GMO's operating machines on multiple occasions over the course of at least two months and with the benefit of having reviewed Whinstone and GMO's technical documents concerning GMO's operations at the Texas Data Center that will be exchanged over the course of discovery.

7. If I am not afforded the opportunity to visit the Texas Data Center to observe and document GMO's operating machines on multiple occasions over the course of at least two months, and with the benefit of having reviewed Whinstone and GMO's technical documents concerning GMO's operations at the Texas Data Center that will be exchanged over the course of discovery, my assessment of the claims, defenses, and damages asserted by the parties to this action will necessarily be hampered.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 31, 2023.


KENYON HAYWARD

CERTIFICATE OF SERVICE

I, Leslie Thorne, declare under penalty of perjury that on July 31, 2023, I served this DECLARATION OF KENYON HAYWARD IN SUPPORT OF GMO'S ORDER TO SHOW CAUSE FOR A TEMPORARY RESTRAINING ORDER TO PRESERVE EVIDENCE AND THE STATUS QUO on all counsel of record via ECF filing.

By: /s/ Leslie Thorne
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